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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,279	12/21/2001	Earle H. Sherrod	17,722	3072

23556 7590 04/25/2003

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EXAMINER

CHEN, VIVIAN

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 04/25/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,279

Applicant(s)

SHERROD ET AL.

Examiner

Vivian Chen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 14-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 is vague and indefinite because the term "low strength barrier material" is a relative term which renders the claim indefinite. The term "low strength" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. Claims 1-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-21 of copending Application No. 10/026,197 in view of:

(a) WO 99/45834 (hereinafter WO '834); or

(b) GERMAN PUBLICATION 20016916U1 (hereinafter DE '916) and CANADIAN PATENT 819,353 (hereinafter CA '353).

Application No. 10/026,197 claims a multilayer dispersible film as recited in application claims 11-21. However, the copending Application fails to explicitly disclose the recited commode liner structure.

WO '834 discloses toilet or commode liners comprising two opposing members joined together so as to form a liner with an open top, wherein the liner having a trapezoidal shape which is wider at the top than at the bottom (Figures 28-30, 31, 32, 34).

DE '916 discloses a toilet liner with an open top, wherein the liner having a trapezoidal shape which is wider at the top than at the bottom.

CA '353 discloses that it is well known in the art to form liners for containing bodily waste from two sheets joined together to form a container with an open top (lines 15-16, page 4)..

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a flushable and dispersible barrier laminate as claimed in copending Application No. 10/026,197 to form conventional disposable articles such as tapered toilet liners as disclosed in WO '934 and DE '916. It also would have been obvious to form such liners by joining two opposing members as illustrated in CA '353. One of ordinary skill in the art would

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have adjusted the dimensions and the mechanical and solubility properties of the liner in order to obtain the desired flushing, durability, and capacity for a given application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1-2, 5, 7 rejected under 35 U.S.C. 102(b) as being anticipated by WO 99/45834 (hereinafter WO '834).

WO '834 discloses toilet or commode liners comprising two opposing members joined together so as to form a liner with an open top, wherein the liner having a trapezoidal shape

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which is wider at the top than at the bottom (Figures 28-30, 31, 32, 34) and wherein the width of the liner is less than 8 inches (20 cm) at the bottom (Figures 29, 31).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-10, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/45834 (hereinafter WO '834).

Claims 1-2, 5, 7 are rejected under 35 U.S.C. § 102(b) as being anticipated by WO '834 as stated above. However, in the event the claims are not anticipated, the claims are obvious for the following reasons:

WO '834 discloses toilet or commode liners comprising two opposing members joined together so as to form a liner with an open top, wherein the liner having a trapezoidal shape which is wider at the top than at the bottom (Figures 28-30, 31, 32, 34) and wherein the width of the liner is less than 8 inches (20 cm) at the bottom (Figures 29, 31).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to select the dimensions and the mechanical and solubility properties of the liner in order to obtain the desired flushing, durability, and capacity for a given application.

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9. Claims 1-10, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over GERMAN PUBLICATION 20016916U1 (hereinafter DE '916) and CANADIAN PATENT 819,353 (hereinafter CA '353).

DE '916 discloses a toilet liner with an open top, wherein the liner having a trapezoidal shape which is wider at the top than at the bottom. However, the reference does not explicitly disclose two opposing members joined together.

CA '353 discloses that it is well known in the art to form liners for containing bodily waste from two sheets joined together to form a container with an open top (lines 15-16, page 4).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to form a tapered toilet liner as disclosed in DE '916 by a conventional method such as joining two opposing sheets as illustrated in CA '353. One of ordinary skill in the art would have selected the dimensions and the mechanical and solubility properties of the liner in order to obtain the desired flushing, durability, and capacity for a given application.

10. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over ZHAO ET AL (US 6,514,602) in view of:

(a) WO 99/45834 (hereinafter WO '834); or

(b) GERMAN PUBLICATION 20016916U1 (hereinafter DE '916) and CANADIAN PATENT 819,353 (hereinafter CA '353).

ZHAO ET AL discloses a water-dispersible, water-impermeable multilayer laminate suitable for forming flushable, disposable hygienic articles, wherein the laminate comprises a water-impermeable, water-insoluble barrier layer comprising polylactide acid polymers, a water-

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soluble layer comprising polyvinyl alcohol, and a water-permeable layer (lines 43-59, col. 4; lines 42-43, col. 5; lines 13-20, 51-55, col. 7; lines 17-25, col. 8). However, the reference does not explicitly disclose the recited commode liner structure.

WO '834 discloses toilet or commode liners comprising two opposing members joined together so as to form a liner with an open top, wherein the liner having a trapezoidal shape which is wider at the top than at the bottom (Figures 28-30, 31, 32, 34).

DE '916 discloses a toilet liner with an open top, wherein the liner having a trapezoidal shape which is wider at the top than at the bottom.

CA '353 discloses that it is well known in the art to form liners for containing bodily waste from two sheets joined together to form a container with an open top (lines 15-16, page 4)..

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a flushable and dispersible barrier laminate as disclosed in ZHOU ET AL to form conventional disposable articles such as tapered toilet liners as disclosed in WO '934 and DE '916. It also would have been obvious to form such liners by joining two opposing members as illustrated in CA '353. One of ordinary skill in the art would have adjusted the dimensions and the mechanical and solubility properties of the liner in order to obtain the desired flushing, durability, and capacity for a given application. It would have been obvious to utilize conventional disposable materials such as tissue as the outer, water-permeable layer of ZHOU ET AL in order to provide support and to regulate the rate of dissolution of the laminate when exposed to water.

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Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

RENN ET AL (US 3,772,712) discloses a conical toilet liner.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivian Chen whose telephone number is (703) 305-3551. The examiner can normally be reached on Monday through Thursday from 8:30 AM to 6 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (703) 308-2367. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (for non-after finals) and (703) 872-9311 (for after-finals).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

April 21, 2003



Vivian Chen
Primary Examiner
Art Unit 1773